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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
10/689,856	10/20/2003	Matthew L. Tripp	68911-060	3345	
7	590 11/13/2006		EXAM	INER	
SIMONA A. LEVI-MINZI,Ph.D.			MELLER, MICHAEL V		
McDERMOTT WILL & EMERY LLP 201 SOUTH BISCAYNE BOULEVARD			ART UNIT	PAPER NUMBER	
STE. 2200			1655		
MAIMI,, FL	33131		DATE MAILED: 11/13/200	DATE MAILED: 11/13/2006	

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary    10/689,855   TRIPP ET AL.		Application No.	Applicant(s)			
Michael V, Meller	Office Action Commons	10/689,856	TRIPP ET AL.			
The MAILNG DATE of this communication appears on the cover sheet with the correspondence address Period for Roply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. Extensions of time may be available under the poverages of 37 CR1 1380, in ne event. however, may a reply be timely find  I NO period for reply is appelled above, the mainturn statutory benied will exply and vill expire SIX (5) MONTHS from the maining date of this communication. Fallute to reply within the set or seateded period for reply will by statels, cause the splication to become ASALNODED 13 to 15. C. § 133. Any major proched by the 10 files later than three months after the maining date of this communication, even if smaly filed, may reduce any seared private turn adjustment. Cas 37 CPR 1-104(b)  Status  1) □ Responsive to communication(s) filed on 27 September 2006.  2a) □ This action is FINAL.  2b) □ This action is non-final.  3) □ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4  □ Claim(s) 214-229 is/are pending in the application.  4a) Of the above claim(s) is/are withdrawn from consideration.  5) □ Claim(s) is/are allowed.  6) □ Claim(s) is/are rejected.  7) □ Claim(s) is/are rejected.  7) □ Claim(s) is/are rejected to by the Examiner.  Application Papers  9) □ The greecification is objected to by the Examiner.  Application Papers  9) □ The drawing(s) filed on is/are: a) □ accepted or b) □ objected to by the Examiner.  Application rawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.85(a).  Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  11 □ The drawing(s) filed on is/are: a) □ accepted or b) □ objected to by the Examiner.  Applicatio	Office Action Summary	Examiner	Art Unit			
Period for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.  after SIX (8) MONTH'S from the realing date of this communication.  If NO period for reply is specified above, the readinus stations protein day be entirely stated. The period for reply will be stated above, the readinus stations protein day and will store (8) (8) MONTH'S from the mailting date of this communication.  Fallows to reply within the act or elemeda period for reply will, by statute, cause the spoilcation to become ARANDONED (53 LIS, 5 § 133).  Fallows to reply within the act or elemeda period for reply will, by statute, cause the spoilcation, even if findly filed, may reduce any earned patient term adjustment. See 37 CFR 1.704(b).  This action is FINAL.  2b) This action is non-final.  3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4) Claim(s) 214-229 isfare pending in the application.  4a) Of the above claim(s) isfare withdrawn from consideration.  5) Claim(s) isfare allowed.  6) Claim(s) isfare allowed.  7) Claim(s) isfare objected to.  8) Claim(s) isfare spoilceted to by the Examiner.  10) The drawing(s) filed on isfare: a) accepted or b) objected to by the Examiner.  Application Papers  9) The specification is objected to by the Examiner.  10) The drawing(s) filed on isfare: a) accepted or b drawing(s) be held in abeyance. See 37 CFR 1.85(a).  Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  11) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  a) All b) Some Oldman State and S			<u> </u>			
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## **DETAILED ACTION**

This restriction/election replaces the former one.

## Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 214-221, drawn to a method of preserving joint health, classified in class 435, subclass various.
- Claims 222-229, drawn to a composition, classified in class 514, subclass various.

The inventions are distinct, each from the other because of the following reasons:

Inventions II and I are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case the composition as claimed can be used in a materially distinct process such as treating cancer.

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Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions have acquired a separate status in the art due to their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

This application contains claims directed to the following patentably distinct species: the many different components in the compositions. The species are independent or distinct because they vary in structure and function. Applicant is required to clearly enumerate all of the components to be in the elected composition or use of that composition.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 214, 216, 218, 222, 224, 226 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

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Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim

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remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael V. Meller whose telephone number is 571-272-0967. The examiner can normally be reached on Monday thru Thursday: 9:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

> Michael V. Meller **Primary Examiner**

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